

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No. 19-CR-227-1-LJV

JOSEPH BONGIOVANNI,

Defendants.

NOTICE OF MOTION

Moving Party:	Defendant Joseph Bongiovanni
Date and Time:	TBD
Place:	Hon. Lawrence J. Vilaro U.S. Courthouse 2 Niagara Square Buffalo, New York 14202
Supporting Papers:	Declaration of Robert C. Singer, Esq., executed June 13, 2024 and Exhibits A & B.
Answering Papers:	Due upon order of the court.
Relief Requested:	An Order granting Defendant's Motion to Modify his Conditions of Release by removing his ankle monitor and reverting to Smart Link tracking.

Dated: June 13, 2024
Williamsville, New York

THE LAW OFFICE OF PARKER R. MACKAY
Attorneys for Defendant Joseph Bongiovanni

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**TO: United States Attorney's Office
for the Western District of New York**
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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Plaintiff,

v.

Case No. 19-CR-227-1-LJV

JOSEPH BONGIOVANNI,

Defendants.

ATTORNEY DECLARATION

I, ROBERT C. SINGER, ESQ., make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am an attorney at law duly licensed to practice in the State of New York and this Court and I am Owner of Singer Legal PLLC. Together with Parker MacKay, Esq., we are attorneys for defendant Joseph Bongiovanni.

2. I have worked on this matter extensively; therefore, I am fully familiar with the facts set forth herein. I submit this declaration in support of the defendant Bongiovanni's Motion to Modify his Conditions of Release by removing his ankle monitor and reverting to Smart Link tracking.

3. As this Court is aware, nearly one year ago Mr. Bongiovanni began to experience complications from an ankle monitor installed on his ankle since the start of this case in 2019. The monitor was imposed as a condition of release and permitted GPS tracking of Mr. Bongiovanni by the probation department. Last spring and summer, the strap of the monitor

began to cause abrasions on Mr. Bongiovanni's skin. The abrasions developed because of swelling caused by cancer treatment he received in the 2020s, the after-effects of such treatment, and the monitor itself.

4. In August 2023, Mr. Bongiovanni moved for a modification of his conditions of release. *See* ECF 578, 625. The modification – endorsed by the Probation Department – requested the removal of the ankle monitor and the imposition of a condition using Smart Link. *See id.* The Court requested briefing and, over government objection, ordered the modification to Smart Link. *See* ECF 629.

5. Mr. Bongiovanni remained on the Smart Link system throughout 2023 and through his 2024 trial without incident. He attended *all* of his regularly scheduled appearances. He also has complied with *every* other condition of release imposed by the Court since 2019 without *any* violation. On April 12, 2024, Trial #1 concluded and Mr. Bongiovanni was convicted of two counts involving a false statement and obstruction of justice, respectively, acquitted of another count, and the jury failed to reach a verdict on twelve other counts. Following the announcement of the verdict, the government moved to detain Mr. Bongiovanni pending sentence on the two counts of conviction. The Court denied the government's motion for detention and released Mr. Bongiovanni on conditions, but, once again, the Court imposed an ankle monitor with GPS as a condition of release. *See* ECF 867. This was ordered over the objection of the defense who cited the previous issues caused by the monitor and Mr. Bongiovanni's flawless track record of compliance. The Court indicated that if complications reoccurred, then it would entertain a defense motion to remove the monitor again.

6. Last month, Mr. Bongiovanni started to develop complications with the ankle monitor. He discussed his concerns and issues with USPO Macaluso. Office Macaluso attempted to 1) adjust the monitor strap and make it looser and 2) switched the monitor from one leg to the other. All of these measures have not helped and the swelling and abrasions continue to worsen.

7. Mr. Bongiovanni discussed this situation with his counsel. Counsel advised to seek the advice of a medical professional. Last week, Mr. Bongiovanni went to an appointment at Roswell Park Cancer Center. His nurse practitioner noted the complications caused by the ankle monitor and prescribed skin cream to help with the abrasions. As for the swelling, the nurse practitioner recommended the use of compression socks to control swelling, but this medical device cannot be used because use of the ankle monitor does not permit wearing socks between the strap and the skin. A copy of the medical records is attached as Exhibit A to this declaration. Recent pictures of Mr. Bongiovanni's ankle/leg are attached as Exhibit B.

8. As the exhibits demonstrate, wearing this device causes Mr. Bongiovanni constant pain. The device cuts and inflames his skin which makes Mr. Bongiovanni prone to infection and illness. The device prevents Mr. Bongiovanni from wearing compression socks which were prescribed to ameliorate the constant swelling in his legs. In short, the device seriously interferes with his quality of life.

9. Based on the above, the Court should remove this monitor and return Mr. Bongiovanni to Smart Link forthwith. Upon information and belief, the Probation Office does not have any objection to returning to Smart Link. The system worked flawlessly and provided

USPO Macaluso the ability to monitor Mr. Bongiovanni properly. Furthermore, Mr. Bongiovanni's track record of compliance with every release condition since 2019 demonstrates, by clear and convincing evidence, that he is neither a flight risk nor a danger to the community if Smart Link is used in lieu of the ankle monitor. The fact that he continues to comply with his conditions and court appointments *after* he was convicted is evidence of his commitment to abiding by his conditions. Consequently, this Court should modify his conditions of release accordingly.

Dated: June 13, 2024
Williamsville, New York

SINGER LEGAL PLLC

Attorneys for Defendant Joseph Bongiovanni

By: s/ Robert C. Singer, Esq.

Robert C. Singer, Esq.

80 E Spring Street

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Exhibit A



Dermatology Provider Follow-up

NAME: BONGIOVANNI, JOSEPH S | **MRN:** [REDACTED] | **VISIT:** [REDACTED] | **DOB:** [REDACTED] |
AUTHORED: 2024-06-03 15:06:00 | **LOCATION:** Dermatology Clinic | **SERVICE DER**

TREATMENT CARE PLAN

1. History of melanoma of the distal anterolateral right upper arm, Breslow depth 0.9mm.

[REDACTED]

2. [REDACTED]

3. Venous stasis dermatitis.

For swelling of the bilateral lower legs, I recommended compression stockings, and for the dermatitis I recommended hydrocortisone 2.5% cream twice a day as needed for erythema and itching. Patient reports he cannot use either as he is not supposed to put anything between the monitor and his skin. Prescription was e-submitted to patient's pharmacy, in case he is able to have the monitor removed. Encouraged leg elevation to reduce swelling, avoid standing for long periods of time and take walks.

4. Abrasion left medial ankle and excoriation left lower leg from ankle monitor. Patient is hoping to have the monitor removed soon to avoid further trauma. For the abrasion, keep area clean, apply white petroleum jell and a bandage until healed.

Patient will follow up in 6 months or sooner if needed, to be coordinated with STS appointment.

VISIT REASON/HISTORY OF PRESENT ILLNESS

The patient is a 59 year old white male with a personal history of melanoma.

Melanoma History:

Venous stasis dermatitis:

Patient has used hydrocortisone 2.5% cream in the past with good effect. I have recommended compression stockings during flares

Erosions and excoriations

-- History of erosions and excoriations due to ankle monitor. Resolved when monitor was off.

Patient reports the monitor was placed back on and is causing skin to break down again. He notes swelling bilaterally to lower legs but can not get compression stockings on with the monitor.

Patient reports regularly following up with an eye doctor and dentist.

PAST MEDICAL/SURGICAL/FAMILY HISTORY/SOCIAL HISTORY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PAST SURGICAL HISTORY

[REDACTED]

[REDACTED]

FAMILY HISTORY

[REDACTED]

[REDACTED]

SOCIAL HISTORY

[REDACTED]

REVIEW OF SYSTEMS

[REDACTED]

PERFORMANCE STATUS

Status: Not required this visit

ALLERGIES & MEDICATIONS

ALLERGIES

[REDACTED]

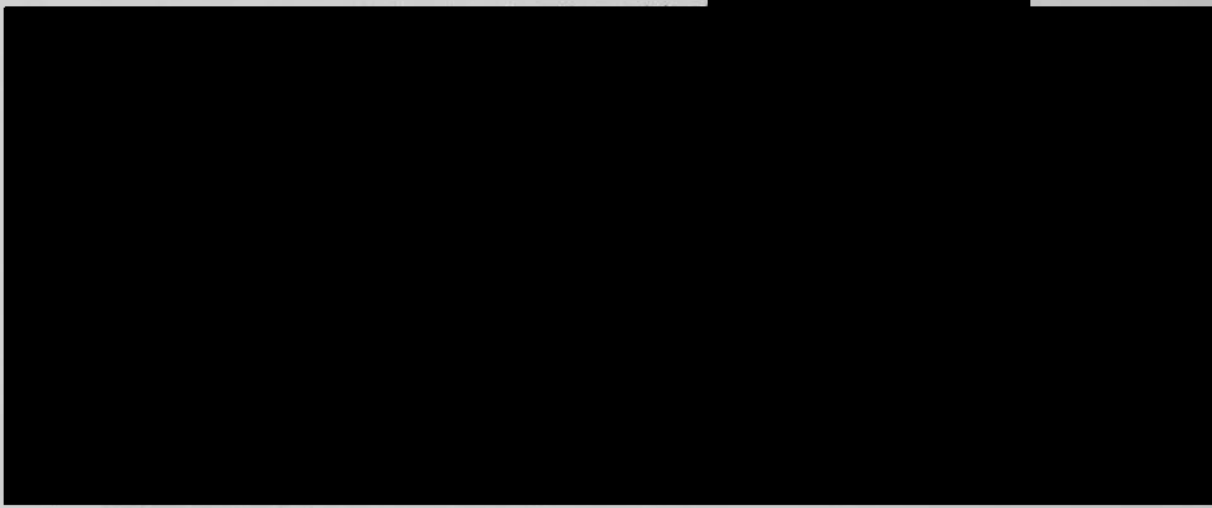
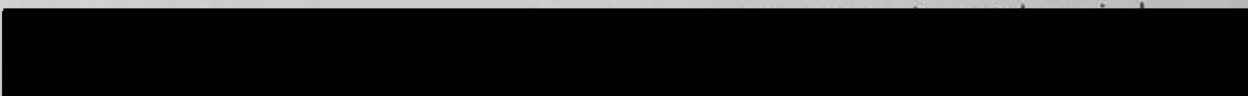
HOME MEDICATIONS

hydrocortisone 2.5% topical cream: Apply topically to affected area 2 times a day as needed for itching to lower legs during flares

VITAL SIGNS

[REDACTED]

PHYSICAL EXAM

- 
- Left medial lower leg linear excoriation
 - Left medial ankle angular 2cm bright pink abrasion
 - Bilateral lower extremity edema
 - Mild erythema bilateral medial lower legs
- 

PROVIDER ATTESTATION

APP /Trainee Statement

I independently evaluated the patient.

Time Spent on Today's Encounter:

APP Time Spent: 25 minute(s)

Total Time Spent: 25 minute(s)

Physician to Receive Faxed Copies

CC: 590505/GORDON P TUSSING, MD

4643 Main St.

Snyder, New York 14226

Electronic Signatures:

Rohl, Ruth (NP) (Signed 04-Jun-2024 12:58)

Authored: Provider Note, Attestation, Fax, Preview

Last Updated: 04-Jun-2024 12:58 by Rohl, Ruth (NP)

My Notes

This section can be used to take notes you and your authorized users want to remember from this visit. Please note these comments are not monitored by your care team.

Add A Comment

View History

1. Viewed by Bongiovanni, Joseph S at 2024-06-10 11:40:14.

Exhibit B



